TOP-A PLASTIC SDN BHD & ORS A

v.

BUMIPUTRA COMMERCE BANK BHD

HIGH COURT MALAYA, KUALA LUMPUR B
RAMLY ALI J
[SUIT NO. D5-22-1449-2000]
3 MAY 2006

CONTRACT: *Breach - Action for damages - Wrongful freezing of accounts - Wrongful dishonour of cheques - Whether allegations proven - Extent of defendant bank's obligation as garnishee - Whether contract breached repeatedly - Damages to be awarded* C

BANKING: *Banker and customer - Duty of care - Wrongful freezing of accounts - Wrongful dishonour of cheques - Extent of defendant bank's obligation as garnishee - Whether defendant failed in its duty as a banker* D

CIVIL PROCEDURE: *Execution - Garnishee order - Extent of defendant bank's obligation as garnishee - Whether defendant wrongly froze plaintiff's accounts - Whether defendant wrongly dishonoured plaintiff's cheques* E

TORT: *Defamation - Libel and slander - Whether defendant bank wrongly and/or maliciously printed defamatory words "Frozen Accounts" and "Refer to Drawer" on plaintiff's cheques - Natural and ordinary meaning of words - Whether capable of conveying a defamatory meaning of and concerning plaintiff* F

The 1st plaintiff ('plaintiff'), which was at all material times a customer of the defendant (a licensed bank) operating one current account, one term loan facility account and 11 fixed deposit accounts, brought an action against the defendant for damages, claiming that: (i) the defendant had wrongly frozen the plaintiff's accounts from 15 October 1999 to 22 October 1999; (b) the defendant had wrongly dishonoured the cheques presented for payment from 15 October 1999 to 22 October 1999; and (c) the defendant had wrongly and/or maliciously printed the words "Frozen Account" on the said cheques. The plaintiff's cause of action centred on two Garnishee Orders to Show Cause, both dated 5 July 1999, which the defendant had received on 15 October 1999. Thereafter, the defendant froze all the plaintiff's accounts from 15-22 October 1999 for eight days (or seven banking days) without informing the plaintiff verbally, by telephone, G H I

by facsimile or by any other means. The plaintiff only came to know about the frozen accounts on 18 October 1999. Furthermore, a sum of RM98,888.06 was never allowed to be utilised by the plaintiff even though it was deposited after the plaintiff's current account had already been frozen. The main issues requiring determination were the extent of the defendant's obligation (as a garnishee) under the said Garnishee Orders and whether the natural and ordinary meaning of the words used in the cheques was capable of conveying a defamatory meaning of and concerning the plaintiff.

Held (for the plaintiff):

(1) In the present case, both the Garnishee Orders, from their respective wordings and terms, were 'limited' in nature, with the principal debts, interests and costs clearly specified and spelt out. The sums as stated in the Garnishee Orders could easily be ascertained and determined. In the defendant's letter dated 22 October 1999 to the plaintiff, the defendant notified that it had attached a sum of RM40,000 to satisfy both Garnishee Orders and informed the plaintiff that it was allowed to operate the balance or surplus sum in the plaintiff's account with the defendant. This letter was clear evidence that all the sums stipulated in the Garnishee Orders could be ascertained and determined. Unfortunately, the said letter came too late, after the damage had been done and the plaintiff had been deprived of the facilities for eight days (since 15 October 1999). (paras 25, 28 & 29)

(2) From 15-22 October 1999, the total sum frozen by the defendant was RM443,019.54 (including the sum of RM98,888.06 banked in after the defendant was served with the Garnishee Orders). If added together with the fixed deposit accounts sum of RM211,469.12, the total sum was RM655,088.86. All these sums were frozen by the defendant just to satisfy the judgment debt of RM40,000 under the Garnishee Orders. The defendant had failed in its duty to act promptly as a banker to the plaintiff as its customer. As a prudent banker, the defendant should have notified the plaintiff immediately of the matter upon service of the Garnishee Orders on 15 October 1999 instead of waiting until 22 October 1999. The plaintiff should have been informed that, if he wished to do so, he could open a new account for future transactions. Alternatively, the defendant should have set aside

the total amount required to satisfy the Garnishee Orders in full into a suspense account, and allowed the plaintiff to continue operating the existing accounts. The defendant in this case had done neither one of these things. (paras 28 & 29)

(3) The defendant had wrongly frozen the said amount of RM98,888.06 which was paid in after the Garnishee Orders were served on the defendant and the current account of the plaintiff frozen by the defendant. The said amount was not subject to the Garnishee Orders and should have been paid into a new temporary account so that the plaintiff had the benefit of utilising the amount. The defendant had also not done this. (para 34)

(4) The defendant had wrongly frozen the plaintiff's accounts and all the cheques presented for payment were dishonoured and stamped with the words "Frozen Account" and "Refer to Drawer". These words (particularly the words "Frozen Account") were highly defamatory as it suggested that the plaintiff must have been wound-up or liquidated. The defendant had completely failed to give any defence on this issue of defamation and had never proved the truth of the words "Frozen Account". (paras 38 & 39)

(5) On a balance of probabilities, it was proven that: (a) the defendant had wrongly frozen the plaintiff's accounts from 15 October 1999 to 22 October 1999; (b) the defendant had wrongly dishonoured the cheques presented for payment from 15 October 1999 to 22 October 1999; and (c) the defendant had wrongly and/or maliciously printed the defamatory words "Frozen Account" and "Refer to Drawer" on the said cheques. (para 40)

(6) Damages should be awarded to the plaintiff by the defendant for wrongfully dishonouring the plaintiff's cheques drawn upon the defendant when there were more than sufficient funds in the plaintiff's accounts. The defendant had breached its contract with the plaintiff, not once, but repeatedly. In respect of special damages, the plaintiff ought to be awarded RM1,495,318.79 as prayed for by the plaintiff. As for general damages, after taking into consideration all relevant factors, a sum of RM1,000,000 was reasonable under the circumstances of the present case. As a result of the defendant's

A unprofessional conduct in the matter which was tantamount in the banking industry to a clear disregard of a customer's interest, the defendant also had to pay the sum of RM500,00 as exemplary damages to the plaintiff. (paras 48, 50, 53, 54 & 55)

B *[Order accordingly.]*

Case(s) referred to:

Heppenstall v. Jackson and Barclays Bank Ltd [1939] All ER 10 ***(refd)***

Great One Coconut Products Industries (M) Sdn Bhd v. Malayan Banking
C *Bhd [1985] 2 CLJ 390; [1985] CLJ (Rep) 482 HC* ***(refd)***

Kpohraror v. Woolwich Building Society [1996] 4 All ER 119 ***(refd)***

Ng Cheng Kiat v. Overseas Union Bank [1984] 1 CLJ 185; [1984] 2 CLJ (Rep) 285 HC ***(refd)***

Pang Fee Yoon v. Piong Ken Siong & Ors [1999] 8 CLJ 383 HC ***(refd)***

D *Ratcliffe v. Evan [1892] 2 QB 524* ***(refd)***

Ratus Mesra Sdn Bhd v. Shaik Osman Majid & Ors [1999] 8 CLJ 499 HC ***(refd)***

Tan Sri Dato' Vincent Tan Chee Yioun v. Hj Hasan Hamzah & Ors [1995] 1 CLJ 117 HC ***(refd)***

William Henry Rogers & Ors v. William Whiteley [1892] 118 AC ***(refd)***

E **Legislation referred to:**

Evidence Act 1950, ss. 59, 60, 101, 106

Rules of the High Court 1980, O. 18 r. 19

Subordinate Courts Rules 1980, O. 33, O. 48 r. 25

F **Other source(s) referred to:**

Dato' Syed Ahmad Idid Syed Abdullah Idid, *Judicial Decisions Affecting Bankers and Financiers,* Editorial Note – LBD Vol 1, p 182

J Milnes Holden, *The Law and Practice of Banking Vol. 1: Banker and Customer,* 4th edn, para 3.49, p. 108, para 3-50 pp. 108-109, para
G 3.52, p 109

Paget's Law of Banking, 9th edn, p 240

Poh Chu Chai, *Law of Banker and Customer,* 4th edn, p 386

For the plaintiffs - CK Wong; M/s Kong Choong Keng

For the defendant - Wong Hok Mun (Arham Rahimi with him); M/s Azim,
H *Tunku Farik & Wong*

Reported by Suresh Nathan

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JUDGMENT

Ramly Ali J:

The Parties

[1] The 1st plaintiff at the material times is a company having it's registered office at Lot 2398, Jalan Connaught Bridge, 41300 Klang, Selangor. The 2nd plaintiff is the Managing Director of the 1st plaintiff. The 3rd plaintiff is the Deputy Managing Director of the 1st plaintiff. Initially, the 2nd and 3rd plaintiffs were parties to the present suit. However, they have been struck off as parties and the plaintiff company (1st plaintiff) is now the sole plaintiff.

[2] The defendant, at the material times, is a licensed bank with a branch office at No: 1, Lorong Batu Tiga, 41300 Klang, Selangor.

[3] At all material times, the 1st plaintiff was a customer of the defendant operating the following accounts:

(a) 1 Current Account No: 1206-7074603-01-0 including an Autopay System to pay salaries for its staff and employees and directors;

(b) 1 Term Loan Facility Account No: 1206-0000556-95-0;

(c) 11 Fixed Deposits Accounts Nos:

1206-0275306-68-2;	1206-0275471-68-8;
1206-0275377-68-3;	1206-0275376-68-0;
1206-0275472-68-0;	1206-0275473-68-3;
1206-0275307-68-5;	1206-0275295-68-8;
1206-0275375-68-8;	1206-0275308-68-8;

and 1206-0271108-68-0.

Plaintiff's Causes of Action

[4] The plaintiff's cause of action centers on 2 Garnishee Orders to Show Cause both dated 5 July 1999 respectively by Apex Robot System (M) Sdn. Bhd. under Kuala Lumpur Magistrate Court Summon No: 72-15354-96 and Cheso Machinery Sdn. Bhd. under Kuala Lumpur Magistrate Court Summons No: 72-15355-96 as judgment creditors and the defendant as garnishee.

[5] The defendant had received both the garnishee orders to show cause on 15 October 1999 at 11.30am, and thereafter the defendant had frozen all the plaintiff's accounts from 15 October 1996 to 22 October 1999 for eight days (or seven banking days), without informing the plaintiffs by written notice nor verbally, nor by telephone, nor by facsimile nor by any other means. The plaintiff only came to know about the frozen account when, on 18 October 1999 (at 10am) one of its employees had phoned the plaintiff complaining that two cheques issued by the plaintiff for payment were rejected by the defendant upon presentation.

[6] On 15 October 1999, at 14.30pm after the plaintiff's current account had been frozen by the defendant, there was a sum of RM98,888.06 directly paid into the already frozen current account of the plaintiff from USA by telegraph transfer. This sum of RM98.888.06 was never allowed to be utilised by the plaintiff even though it was deposited after the plaintiff's current account had been frozen. This sum of money was never put into another separate account or temporary separate account by the defendant.

[7] At the material times from 15 October 1999 to 22 October 1999 the total sum frozen by the defendant was RM443,619.54 (including the aforesaid sum of RM98,888.06). If added together with the fixed deposit account sum of RM211,469.17, the total sum is RM655.088.66.

[8] During the same period (15 October 1999 to 22 October 1999), out of the cheques issued by the plaintiff and paid in by the relevant parties for payment, there were 12 cheques had been dishonoured by the defendant and printed the words "FROZEN ACCOUNT" and two cheques had been printed with the word "REFER TO DRAWER".

[9] Among the 14 cheques dishonoured by the defendant, there were two cheques (cheque No: 292692 and 292693) issued to the EPF for the amount of RM15,734 and Perkeso (cheque No: 292747) for the amount of RM890.50. The plaintiff had been imposed a penalty by the EPF due to the 2 dishonoured cheques.

[10] The Autopay System for the payment of the half-monthly salaries and wages to 153 employees of the plaintiff for the amount of RM7.449.50 was not allowed to be debited from the current account of the plaintiff until 20 October 1999.

Plaintiff's Claim

[11] From the statement of claim, the plaintiff's claims are based on three (3) allegations of facts, namely:

(a) the defendant had wrongly frozen the plaintiff's accounts from 15 October 1999 to 22 October 1999 (1st allegation);

(b) the defendant had wrongly dishonoured the cheques presented for payment from 15 October 1999 to 22 October 1999 (2nd allegation); and

(c) the defendant had wrongly and/or maliciously printed the word "Frozen Account" on the said cheques (3rd allegation).

In respect of the 1st and 2nd allegations, these causes of action are in contract whereas the 3rd allegation is premised on defamation.

[12] The plaintiff prays for the followings:

(a) Special Damages – RM1,495,318.79

(b) General Damages – RM22,000,000

(c) Aggravated Damages – RM5,000,000

(d) Exemplary Damages – RM5,000,000

(e) Interest; and

(f) Costs.

Issue Of Liability

[13] The court shall show deal with the issue of liability first.

[14] In respect of liability, the plaintiff's counsel submitted as follows:

(i) the defendant froze all the plaintiff's accounts maintained with the defendant;

(ii) the plaintiff accounts were frozen for seven banking days;

(iii) the defendant froze more than the amount due to the judgment creditor because:

(a) the principal sum and interest payable to the judgment creditors were ascertainable;

(b) the maximum amount which should be frozen should not exceed RM50,000 (ie, RM25,000 x 2); and

(c) the defendant subsequently froze only RM40,000 *vide* its letter dated 22 October 1999;

(iv) the defendant froze monies which were credited into the plaintiff's said account which were deposited after service of the said garnishment orders;

(v) the defendant never informed the plaintiff immediately about the freezing of the account(s); and

(vi) the plaintiff wrongly dishonoured 14 cheques including 2 cheques issued to Employees' Provident Fund and 1 cheque issued to Perkeso.

[15] In the evidence given by PW1, PW2 and PW3, it all shows clearly that the defendant had at all material times during 15 October 1999 to 22 October 1999 never informed or notified the plaintiff that the plaintiff could use or operate the funds in the fixed deposit account even after the plaintiff had repeatedly made requests to the defendant. In such situation it could be said that the defendant had given the plaintiff a very clear notice impliedly that the plaintiff's funds in other accounts with the defendant were also frozen and could not be used by the plaintiff as well. The defendant had not clearly informed the plaintiff that only their current account had been frozen.

[16] On the balance of probabilities, the court is convinced that the defendant had frozen all accounts of the plaintiff with the defendant. The plaintiff was completely deprived of the right and the benefit to use the funds in all the accounts with the defendant as the defendant had never advised, informed and notified the plaintiff to use the other funds. (besides the current account).

[17] In exh. P2 (as well as exh. D24), it is clearly shown that interest was imposed and deducted during the frozen period from 15 October 1999 to 22 October 1999 on the term loan account of the plaintiff. It is shown as well at exh. P3 about interests on all the fixed deposits, that ought to be provided to the plaintiff. In the defendant's statement of defence and the defendant's application under O. 18 r. 19 of RHC (which had been dismissed by this court), the defendant had repeatedly stressed that they were entitled to freeze all the accounts of the plaintiff with them a fact that which they could not have denied at this stage.

[18] The main issue to be determined here is – what is the extent of the defendant's obligation (as a garnishee) under the said garnishee orders. Is it the defendant's obligation to attach 'any debt due or accruing due to the judgment debtor (plaintiff) from the garnishee (defendant) even though the amount of the judgment debt is less than the balance standing to the plaintiff's credit in the accounts; or is the garnishee order only confined to the amount "so much thereof as is sufficient to satisfy the judgment debt or others and the costs of the garnishee proceedings". In order to do that, the court has to see the wordings and effect of the said garnishee orders – whether they are of "unlimited" nature or "limited" nature.

[19] In an 'unlimited' garnishee order, the wordings of the order clearly indicate that the garnishee is to attach "all debts owing or accruing" from the garnishee (the defendant) to the customer to answer the judgment debt, even though it is known that the amount of the judgment debt is less than the balance standing to the customer's credit. In such a situation, the bank (defendant) may and should refuse to pay any cheques drawn by the customer (see: *The Law and Practice of Banking, Vol. 1: Banker and Customer,* 4th edn, by J. Milnes Holden, para 3.49, p. 108).

[20] It was held by the House of Lords in *William Henry Rogers and Others v. William Whiteley* [1892] 118 AC that, when served with an 'unlimited' garnishee order nisi a bank may, and should, refuse to pay any cheque by a customer, even though the amount of the judgment debt is less than the balance standing to the customer's credit. In that case, the House of Lords referred to the wordings and effect of the garnishee order in order to determine whether the order was an 'unlimited' order or 'limited' one. In that case the creditor obtained a garnishee order which ordered that "all debts owing or accruing" from the bank to the customer be attached to answer the judgment debt. The court held that such an order is 'unlimited' in nature.

[21] The other type of garnishee order is a 'limited' garnishee order when the effect is to attach only the amount of the judgment debt plus all other related costs and expenses as ascertainable and stated in the order. The practice is for the garnishee order of this nature to attach debts up to a stated sum only, in which case the bank is free to part with any surplus he may hold on the customers' account.

(see: (1) *The Law and Practice of Banking Vol. 1: Banker and Customer*, 4th edn by J Milnes Holden, para 3.52, p. 109;

(2) *Judicial Decisions Affecting Bankers and Financiers* by Dato' Syed Ahmad Idid bin Syed Abdullah Idid (Editorial Note – LDB Vol. 1, p. 182;

(3) *Paget's Law of Banking* (11th edn) by Mark Hapgood, QC of Grey's Inn).

[22] If a banker is served with a 'limited' garnishee order, and if the amount attached is less than the customer's credit balance, to practice is to transfer from the customer's account to a suspense account a sum sufficient to satisfy the judgment debt and all other related costs and expenses as stipulated in the order. The balance remaining on the customer's account is at his disposal and the relationship of banker and customer will continue. The customer should be notified that a stated sum has been debited to his account in compliance with the terms of the garnishee order.

(see: *The Law and Practice of Banking Vol. 1: Banker and Customer*, 4th edn by J Milnes Holden, para 3.52 p. 109).

[23] In *Law of Dishonour of Cheques* (2nd edn) 1999, by A.N. Saha, the learned author states that:

> As a result of a garnishee order the banker is stopped either absolute or partially from carrying out his obligation to honour his client's cheques. When the banker is informed of the amount required for the satisfaction of the decree in connection with which the order issued, he can honour cheques as long as he can do so without touching the amount required for meeting the decree ... transferred to a suspense account and the customer can be allowed to operate on the balance.

[24] In the present case, in both the garnishee orders, the salient wordings or terms are as follows:

> ... bahawa segala hutang yang kena dibayar atau terakru kena dibayar oleh Garnisi yang tersebut di atas kepada Penghutang Penghakiman yang tersebut di atas dalam jumlah wang sebanyak RM8,800.00 dan faedah sebanyak RM1,847.76 hingga 4 haribulan November 1998 dan faedah 8% setahun bermula dari 4 haribulan November 1998 hingga penyelesaian sepenuhnya dan kos sebanyak RM319.00 ditahan sebagai menjawap penghakiman ...

... bahawa segala hutang yang kena dibayar atau terakru kena dibayar oleh Garnisi yang tersebut di atas kepada Penghutang Penghakiman yang tersebut di atas dalam jumlah wang sebanyak RM8,800 dan faedah sebanyak RM1,270.15 hingga 4 haribulan November 1998 dan faedah 8% setahun bermula dari 4 haribulan November 1998 hingga penyelesaian sepenuhnya dan kos sebanyak RM319.00 ditahan sebagai menjawap penghakiman ...

[25] The court is satisfied that both the garnishee orders in the present case from their respective wordings and terms, are 'limited' in nature, with the principal debts, interests and costs clearly specified and spelt out in the orders. The sums as stated in the orders can easily be ascertained and determined.

[26] Both the garnishee orders were issued by the Kuala Lumpur Magistrate's Court under O. 33 of the Subordinate Courts Rules 1980 "to satisfy the judgment debt or other and the costs of the garnishee proceedings." Order 48 r. 25 of the Subordinate Court Rules 1980 has stated very clearly the costs that the judgment creditor is entitled to under the law. All these costs are easily ascertainable and determined.

[27] Order 48 r. 25 of the Subordinate Court Rules 1980 provides:

25. Where upon the application of any person who has obtained a judgment or order against a debtor for the recovery or payment of money a garnishee order is made under Order 33, rule 1, against a garnishee attaching debts owing or accruing from his to the debtor the following costs shall be allowed:

(a) to the garnishee, to be deducted by him from any debt owing by him as aforesaid before payments to the applicant:

Where no affidavit is used – RM25.00

Where affidavit is used – RM40.00

(b) to the applicant, to be retained, unless the Court otherwise orders, out of the money recovered by him under the garnishee order and in priority to the amount of the debt owing to him under the judgment or order where the amount recovered by the applicant from the garnishee is:

Not more than RM100 – RM10.00

More than RM100 – RM40.00

Where the garnishee fails to attend the hearing of the application and an affidavit of service is required	– RM10.00

[28] In the defendant's letter dated 22 October 1999 to the plaintiff, the defendant notified that the defendant had attached a sum of RM40,000 to satisfy both garnishee orders and informed the plaintiff that they were allowed to operate the balance or surplus sum in the plaintiff's accounts with the defendant. This letter of the defendant is a clear evidence that all the sums stipulated in the garnishee orders can be ascertained and determined. Unfortunately, the said letter came too late, after the damage has been done and the plaintiff has been deprived of the facilities for eight days, (since 15 October 1999). In the present case, there is evidence to show that the plaintiff has no other account with other banks, except the one with defendant (the subject matter of the present suit). At the material times from 15 October 1999 to 22 October 1999, the total sum frozen by the defendant was RM443.019.54 (including the aforesaid sum of RM98,888.06 banked in after the defendant was served with the garnishee orders). If added together with the fixed deposit account sum of RM211,469.12, the total sum was RM655,088.66. All these sums were frozen by the defendant (from 15 October 1999 to 22 October 1999) just to satisfy the judgment debts of RM40,000 under the garnishee orders. The court is satisfied that the defendant has failed in it's duty to act promptly as a banker to the plaintiff, as it's customer.

[29] As a prudent banker, the defendant should have notified the plaintiff immediately of the matter upon service of the garnishee orders on 15 October 1999, not to wait until 22 October 1999. The plaintiff should be informed that, it he wishes to do so, he may open a new account for future transactions. Alternatively, the defendant should have set aside the total amount required to satisfy the garnishee orders in full into a suspense account and allow the plaintiff to continue operating the existing accounts. Both have not been done by the defendant in this case. In this respect, the court is in full agreement with J. Milnes Holden in his book *The Law and Practice of Banking Vol. 1: Banker and Customer*, 4th edn, para 3-50 pp. 108-109 where he states:

> 3-50 The customer should be notified of the situation immediately, and he should be informed that, if he wishes to do so, he may open a new account for future transaction. The bank may even be prepared in some cases to permit this new account to become overdrawn, especially in those cases where the balance on the original account exceeds the amount of the garnishee order together with the costs which are likely to be incurred in the garnishee proceedings. Any credit balance on the new account would not be attached by the existing garnishee order.

[30] After the plaintiff's current account had been frozen by the defendant, there was a sum of RM98,888.06 directly paid into the already frozen current account of the plaintiff from USA by telegraphic transfer. This sum of RM98,888.06 had never been allowed to be utilised by the plaintiff eventhough it was deposited after the plaintiff's current account had been frozen by the defendant. This sum of money was never put into another separate account or temporary separate account by the defendant.

[31] In *Heppenstall v. Jackson and Barclays Bank Ltd.* [1939] All ER 10, the Court of Appeal (UK) held that "the garnishee order only affected debts in existence at the date of the service thereof, and the moneys subsequently paid in could not be subject to the order."

[32] Further, in the same case, Scott LJ in delivering the decision had stated that:

> All those decisions make it quite clear that a garnishee order attaches no debts which do not exist at the moment when the order is made and served, and, further than that, the applicant for a garnishee order is required both by the Supreme Court Rules and by the County Court Rules to swear an affidavit as to the amount of the debt alleged then to be owing to the judgment debtor and the jurisdiction to make the order is limited to debts so proved by affidavit. The cases begin with the decision in 1858 in *Jones v. Thompson* (1), where it was clearly laid down, by a Court consisting of Wightman and Crompton, JJ, that the word "or accruing" were limited to the substantive noun "debt", and that, in order to satisfy those words, there had to be a debt in existence, although it might be a debt which was not payable till a subsequent date – *debitum in proesenti solvendum* in future. The same interpretation was followed in *Trapp v. Jones* (2), and again in *Webb v. Stenton* (3), where Lord Esher, MR, expressed the decision if the Court in absolutely unambiguous language at p. 523 ...

[33] In *Law of Banker and Customer* (4th edn) by Poh Chu Chai, p. 386, the learned author agrees that "a garnishee order affects a debt due or accruing due to a judgment debtor at the date of the order; funds which become payable to a judgment debtor after the date of the garnishee order are generally not affected by the order."

[34] In the present case, the defendant has wrongly frozen the said amount of RM98,888.06 which was paid in after the garnishee orders were served on the defendant and the current account of the plaintiff frozen by the defendant. The said amount is not subject to the garnishee orders and should be paid into a new temporary account so that the plaintiff has the benefit to utilise the amount. This was also not done by the defendant.

[35] During the frozen period from 15 October 1999 to 22 October 1999, 12 cheques had been dishonoured by the defendant and printed with the word "frozen account" and 2 cheques had been printed with the word "refer to drawer". Contrary to the submission made by the defendant, the words "frozen account" is highly defamatory, in its original meaning. It only suggests that the plaintiff must have been wound up or liquidated. It is more severe than the words "account closed". The defendant had published this defamatory words to the holder of the cheques, the banks which were clearing the cheques.

[36] In *Ng Cheng Kiat v. Overseas Union Bank* [1984] 1 CLJ 185; [1984] 2 CLJ (Rep) 285 Wan Hamzah J held:

> One question to be considered in this case is whether the words "Account Closed" were defamatory. In *Wilson v. Midland Bank* the customer's cheque was wrongfully dishonoured by the bank with the answer "no account". The Court awarded the customer nominal damages for breach of contract and substantial damages for libel. Therefore in my opinion the words "Account Closed" written on a cheque contrary to the truth would similarly be libellous. As I have indicated, no blame can be attached to the Bank for printing the words "Account Closed" on the cheque No. 488534. As regards the cheque No. 488535, in my judgment it was libellous for the Bank to print the words "Account Closed" on it at the time when the Bank had the duty to honour it.

[37] It is a question of law for the court to decide whether the natural and ordinary meaning of the words used in the articles is capable of conveying a defamatory meaning of and concerning the plaintiff. Libel does not depend on the intention of the defamer

but on the fact of defamation and it is irrelevant to consider the meaning that the writer and publisher intended to convey. The question is to be determined by an objective test.

(see: (1) *Tan Sri Dato' Vincent Tan Chee Yioun v. Haji Hasan bin Hamzah & Ors* [1995] 1 CLJ 117;

(2) *Ratus Mesra Sdn. Bhd. v. Shaik Osman Majid & Ors* [1999] 8 CLJ 499).

[38] In the present case, it has been shown that the defendant had wrongly frozen the plaintiff's accounts. All the cheques presented for payment were dishonoured and stamped with the words "frozen account" and "refer to drawer". These words (particularly the words "frozen account") are highly defamatory, as it suggests that the plaintiff must have been wound-up or liquidated. The law presumes that defamatory words are false with the burden of establishing the truth of the statement falling squarely on the defendant.

Procedurally, the defendant should have attempted to prove the truth of those words, after the plaintiff had adduced the defamatory effect of the words. How to carry out this difficult task will depend on the type of action undertaken by the defendant. It may be resolved at the plaintiff's stage by a tactically successful cross-examination or by the production of cogent evidence at the defence stage. (see: *Pang Fee Yoon v. Piong Ken Siong & Ors* [1999] 8 CLJ 383).

[39] The defendant in the present case has completely failed to give any defence on this issue of defamation. This can be seen in the statement of defence and testimonies tendered by the witnesses of the defendant. The truth of those words "frozen account" were never proved by the defendant.

[40] On the above considerations, the court is satisfied, on the balance of probabilities that:

(a) the defendant had wrongly frozen the plaintiff's accounts from 15 October 1999 to 22 October 1999;

(b) the defendant had wrongly dishonoured the cheques presented for payment from 15 October 1999 to 22 October 1999; and

(c) the defendant had wrongly and/or maliciously printed the defamatory words "frozen account" and "refer to drawer" on the said cheques.

Issue Of Damages

[41] The plaintiff is claiming for the followings:

(a) Special Damages – RM1,4495,318.79

(b) General Damages – RM22,000,000

(c) Aggravated Damages – RM5,000,000

(d) Exemplary Damages – RM5,000,000

(e) Costs

(f) Interest.

[42] The plaintiff's evidence, which was not seriously challenged by the defendant, show that, as a result of the defendant's action in wrongly freezing the plaintiff's accounts during the relevant period (15 October 1999 to 22 October 1999), the plaintiff has suffered the followings:

(a) the cheques issued by the plaintiff to various persons where dishonoured upon presentation for payment;

(b) employees and operations were not in working condition. They worried that the plaintiff would be wound-up and their future with the plaintiff uncertain;

(c) suppliers and customers called to find out whether the plaintiff has been wound-up;

(d) Plaintiff stopped issuing further cheques for payment. For those which had been issued, plaintiff has to call suppliers not to bank in first; some were replaced by director's personal cheques'. Some creditors and suppliers were very angry and had lost confidence in the plaintiff financial standing;

(e) all the cheque holders came to complain once they realised that their cheques could not be honoured;

(f) customers and suppliers lost confidence in the plaintiff. It took quite a long time to convince some of them to continue trade with the plaintiff;

(g) Workers and employees were not able to get their pay (on 17th of each month) as the Autopay facility for wages of workers and employees had also been frozen by the defendant;

(h) Some workers and employees left the plaintiff; and

(i) Some of the dishonoured cheques were for the purpose of employees contributions to the EPF. The plaintiff was charged penalty of RM198 for failure to pay EPF contributions for it's employees in time.

[43] The court finds guidance on this issue in the case of *Ng Cheng Kiat v. Overseas Union Bank* [1984] 1 CLJ 185; [1984] 2 CLJ (Rep) 285, where Wan Hamzah J held as follows:

> Where a customer brings an action against his bank for wrongfully refusing to pay a cheque which he has drawn, the amount of the damages for breach of contract depends on whether or not the customer is a trader. In an action for breach of contract for wrongfully dishonouring a trader's cheque, the Plaintiff is entitled to recover substantial but reasonable damages for injury his commercial credit, without the necessity of alleging and proving any actual damage.

[44] In another case, *Great One Coconut Products Industries (M) Sdn. Bhd. v. Malayan Banking Bhd.* [1985] 2 CLJ 390; [1985] CLJ (Rep) 482, Zakaria Yatim J, held as follows:

> I shall now deal with the quantum of damages to be awarded to the Plaintiff. ... The Plaintiff, however, is still entitled to claim substantial damages, but the damages must be reasonable. See J.M. Holden, *The Law and Practice of Banking*, 2nd Edn. Vol. 1 p. 84. The amount asked for by the Plaintiff is far too exorbitant. The question is what are the factors to be taken into consideration in order to award substantial but reasonable damages in favour of the Plaintiff in the present case. In my opinion, the factors to be taken into consideration are as follows: First, the position and standing of the trade of the honouring the five bank drafts; ... and fourthly, whether there was an injury to the credit of the Plaintiff as a trader.

[45] *Paget's Law of Banking*, 9th edn at p. 240 also states:

> Every authority from *Foley v. Hill* [1848] Z HL Cas. 28) to *Joachimson v. Swiss Bank Corpn* [1921] 3 KB 110, 26 Com Cas. 196) and the Bill of Exchange Act alike recognize that the Banker's primary function and duty is to honour his customer's cheques, provided the state of the account warrants his doing so and there is no legal reason or excuse to the contrary. Apart from this contractual obligation, or as a consequence thereof, the pay in banker must remember that his customer's credit is or may be seriously injured by the return of one of his cheques dishonoured, and the smaller the cheque, the greater the possible damage to credit (*Marzetti v. Williams* [1830] 1 B & Ad 415).

[46] The credit rating of the plaintiff (who is actively engaged in trade) is as important for their trade transactions including mortgages and hire-purchase as well as banking and credit facilities. The refusal to meet the plaintiff's cheques is so obviously injurious to the plaintiff's credit and that the plaintiff should recover, substantial, but reasonable compensation for the injury done to it's credit.

(see: *Kpohraror v. Woolwich Building Society* [1996] 4 All ER 119).

[47] By printing the words "frozen account" and "refer to drawer", it is actually highly libellous, and tantamount to mean that the plaintiff had been wound up or had gone into liquidation.

It is actually worse than all the events that happened in *Ng Cheng Kiat v. Overseas Union Bank* [1984] 1 CLJ 185; [1984] 2 CLJ (Rep) 285 or *Great One Coconut Products Industries (M) Sdn. Bhd. v. Malayan Banking Bhd.* [1985] 2 CLJ 390; [1985] CLJ (Rep) 482 or *Kpohraror v. Woolwich Building Society* [1996] 4 All ER 119. The damage is of upmost disastrousness, and serious to the plaintiff as a company and a trader in the present business, commercial and industrial world as news had been wide spread fast with the most advanced telecommunication systems available for example the mobile phone. Also the plaintiff is situated in Klang, Selangor Darul Ehsan and it is smaller in town area as compared with a city like Kuala Lumpur. Hence, news would be wide spread.

[48] As had been decided in the above quoted cases, damages should be awarded to the plaintiff by the defendant for wrongfully dishonouring the cheques of the plaintiff drawn upon the

defendant where there were more than sufficient funds in the plaintiff's accounts. The damages should be substantial and not nominal and the plaintiff need not even plead or prove damages. The defendant was not in breach of the contract for wrongfully dishonouring the plaintiff's cheque once but repeatedly for 14 times.

[49] The general rule is that damages are to be assessed on a compensatory basis ie, to compensate the plaintiff for the harm caused to him by those libelous words. The compensation may be inflated by certain aggravating factors such as the defendant's nature, conduct, malice etc; trade operation of the plaintiff, customers' and suppliers' estimation of the plaintiff's credit integrity; and the locality where the plaintiff operates its business.

[50] As for special damages, the plaintiff is claiming for a sum of RM1,495,318.79. As pleaded by the plaintiff at para. 39 of the statement of claim as well as testimonies of PW1, PW2 and PW3, the court is satisfied that the plaintiff has clearly been either deprived of or suffered loss as the consequence of the frozen period from 15 October 1999 to 22 October 1999. On the balance of probabilities the plaintiff had actually discharged the burden under ss. 101 and 106 of the Evidence Act 1950; and the defendant had failed to rebut the testimonies of PW1, PW2, and PW3 during cross-examination or through its own witnesses. Therefore, a sum of RM1,495,318.79 is allowed for special damages as claimed.

[51] As for general damages, the court is also satisfied, on the balance of probabilities, that the witnesses of the plaintiff (PW1, PW2 and PW3) had duly testified in court and the same had not been challenged and/or rebutted by the defendant during cross-examination. By virtue of ss. 59 and 60 of the Evidence Act 1950, the plaintiff had proven all facts by evidence given by PW1, PW2 and PW3, on the balance of probabilities.

[52] It is trite that in cases of libel and slander actionable *per se*, the plaintiff need not prove actual damages for as was said by Bowen LJ in *Ratcliffe v. Evan* [1892] 2 QB 524 at p. 528: "The Law presumes that some damages will flow in the ordinary course of things from the mere invasion of his absolute right to reputation".

[53] Eventhough the plaintiff is entitled to claim substantial damages from the defendant, the court must stress that the damages must be reasonable. In the present case, the plaintiff is asking for RM22,000,000 as general damages. This amount is far too exorbitant and excessive. After taking into consideration all the relevant factors, the court is of the view that a sum of RM1,000,000 as general damages is reasonable under the circumstances of the present case.

[54] As pleaded, the plaintiff is also claiming for exemplary damages for a sum of RM500,000. The defendant is a well-established bank in Malaysia. The defendant's primary function and duty is to honour its customer's cheque, provided the state of the account warrants his doing so and there is no legal reason or excuse to the contrary. Apart from his contractual obligation or as a consequence thereof, the defendant must remember that it's customer's credit is or may be seriously injured by the return of his cheques dishonoured.

In the present case, the defendant has failed to notify the plaintiff of the garnishee orders and its action to freeze the plaintiff accounts, immediately after being served with the orders on 15 October 1999. Despite legal advice from its Legal Department, the defendant proceeded to freeze all the plaintiff's account, including a sum which was paid after the account was frozen. The defendant had taken too long (ie, eight days) to inform the plaintiff about the matter. Only on 22 October 1999 the defendant wrote to the plaintiff about the matter and to allow the plaintiff to operate it's account after a sum of RM40,000 was set aside to answer the said garnishee orders. The defendant has failed to take immediate action in order to avoid the plaintiff from being deprived of the facilities. The defendant has also failed to apologise to the plaintiff for all 'wrongs' it has done to the plaintiff. The defendant's unprofessional conduct in the matter tantamounts to a clear disregard of customer's interest in the banking industry.

[55] That being the case, the court feels that exemplary damages as prayed by the plaintiff must be allowed. Thus the court allowes a sum of RM500,000 as exemplary damages to be paid by the defendant to the plaintiff.

Conclusion

Based on the above considerations the court allows the plaintiff's claim against the defendant as follows:

(a) Special Damages – RM1,495,318.79

(b) General Damages – RM1,000,000

(c) Exemplary Damages – RM500,000

(d) Interest (as per statement of claim)

(e) Costs.